

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Rev. No. 2472 of 2002

Date of Decision: May 5,2009

Ramesh Petitioner

Versus

Partap Singh Respondent

Coram: Hon'ble Mr. Justice Ashutosh Mohunta

Present: Mr. S.N.Yadav, Advocate
for the petitioner.

Mr. Rakesh Nehra, Advocate
for the respondent.

...

ASHUTOSH MOHUNTA, J. (Oral)

This revision has been filed by the complainant-Ramesh against the judgment dated 16.7.2002 passed by the Additional Sessions Judge, Jhajjar, vide which the conviction of the accused-Partap Singh as recorded by the judgment of the Judicial Magistrate Ist Class, Jhajjar, dated 9.4.2002 was set aside and the accused-Partap Singh was acquitted of the charges under Section 377 IPC.

Briefly the facts of the case are that on 27.9.1995 at 4:10 P.M. Head Constable Ram Kumar recorded the statement of Ramesh Kumar wherein it was stated that he has three brothers and amongst whom Daya Kishan is the eldest. The elder son of Daya Kishan, namely, Jagjiwan Ram was studying in 6th class in the school in village Gangtan. On 29.8.1995 wife of Daya Kishan told him that although the school time is over but his

Crl. Rev. No. 2472 of 2002

son Jagjiwan Ram has not returned home and therefore he should go and look for Jagjiwan Ram. It has been averred that on reaching the school at 12:30/1:00 P.M., he saw the accused Partap Singh committing an unnatural act with his nephew Jagjiwan Ram and on seeing him the accused ran away by scaling the wall of the school. The complainant saw that his nephew was bleeding from the back side. He was taken to the house and the entire story was narrated to Daya Kishan and to other family members. The matter was also reported to the Sarpanch of the village on 2.9.1995 and they were assured that action would be taken against the accused. However, when no action was taken, therefore, the complaint was lodged on 27.9.1995.

On the basis of the aforementioned complaint, a FIR was registered against the accused Partap Singh, who was a Teacher in the school in village Gangtan.

In order to prove its case, the prosecution examined PW1 Ramesh, the complainant and the alleged eye-witness of the occurrence, who stated that he saw the accused committing the unnatural act upon his nephew. PW2 Jagjiwan Ram, victim and the young boy, who was studying in class 6th has also deposed that the accused Parkash Singh has committed the unnatural act with him. PW3 Murti Devi, mother of the victim, and PW8 Omwati, Sarpanch of the village, and other official witnesses were also examined.

In defence the accused examined Ram Phal, who was the school teacher, as DW1 who deposed that on the relevant day i.e. on 29.8.1995 the school timings were from 8:00 A.M. to 2:10 P.M. The accused also examined DW2 Siri Bhagwan, a Water Carrier in the school,

Crl. Rev. No. 2472 of 2002

who also deposed in the same manner with regard to the school timings. Both the witnesses also stated that they never heard about the incident and on the date of occurrence they were present in the school upto 4 P.M. DW3 Sandeep, DW4 Bhim Singh, DW5 Anand Singh and DW6 Jagbir Singh were also examined. DW5 and DW6, who were also school teachers in the same school in village Gangtan, stated that they were in the school upto 2:10 P.M. and that the accused Partap Singh left in their company after the school time was over.

The trial Court on the basis of the ocular version given by the complainant Ramesh and the ocular version of the victim Jagjiwan Ram convicted the accused under Section 377 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months.

The accused filed an appeal before the Additional Sessions Judge, Jhajjar, who vide his judgment dated 16.7.2002 acquitted the accused on the ground that there was a delay of 28 days in lodging the FIR as the incident took place on 29.8.1995 whereas the FIR was recorded on 27.9.1995. The accused was acquitted also on the ground that the ocular version did not match with the medical report as no injury of any kind was found on the body or around the anus of the victim Jagjiwan Ram.

Apart from the above, reliance was also placed on the testimony of the Head Master Ishwar Singh PW9 and the school teachers DW5 and DW6 according to whom the school timing was from 8 A.M. to 2:10 P.M. whereas the incident is alleged to have taken place at 12:30/1:00

Crl. Rev. No. 2472 of 2002

P.M. on 29.8.1995 i.e. when the school was still running.

It is against this judgment that the complainant has filed this revision. It is pertinent to state that the State has chosen not to file any appeal against the judgment of acquittal.

Counsel for the petitioner has vehemently argued that the judgment passed by the Additional Sessions Judge, Jhajjar, vide which the accused has been acquitted is wholly perverse inasmuch as the statement of the victim and the statement of the eye-witness have been completely overlooked and discarded. Learned counsel has also submitted that the delay of 28 days has been duly explained by the prosecution witnesses as the occurrence was immediately narrated to the Sarpanch of the village who had assured that action would be taken against the accused but when no action was taken, it is only thereafter that the FIR was registered on 27.9.1995. Learned counsel has further placed reliance on the statement of Omwati PW8, who was then a Sarpanch, who has corroborated the fact that the incident was narrated to her by the boy as well as his parents. On the basis of the aforementioned arguments learned counsel submits that the judgment of the lower Appellate Court is liable to be set aside and the case is liable to be sent back for a decision afresh after re-appreciation of the evidence. Learned counsel has also submitted that in a case under Section 377 IPC there is no requirement that the victim should undergo a medical test.

The arguments raised by the counsel for the petitioner have been controverted by Mr. Nehra, appearing on behalf of the accused. Counsel for the accused has submitted that there was an inordinate delay in lodging of the FIR as the incident is alleged to have taken place on

Crl. Rev. No. 2472 of 2002

29.8.1995 whereas the FIR was recorded on 27.9.1995 i.e. after a delay of 28 days.

A perusal of the statement made by DW1 to DW6 as well as the statement of PW9 Headmaster of the School in village Gangtan goes to show that the school timings were from 8:00 A.M. to 2:10 P.M. and it would be absolutely impossible for any teacher to commit an unnatural act with a student especially when the school is still running. Learned counsel submits that the entire supporting staff i.e. Chowkidar, Peons and Teachers were present in the school and, hence, it was not possible for the accused to commit an unnatural act upon the victim Jagjiwan Ram.

Learned counsel has also submitted that if such an unnatural act had been committed which as per the prosecution was seen by the complainant Ramesh than he would have definitely brought this incident to the notice of the school staff and in the absence of the same no reliance can be placed on his testimony. It has also been contended that the victim Jagjiwan Ram was subjected to a medical examination which was conducted by PW7 Dr. V.K.Jain who has stated that no abrasion, bruise or scratch was found on the body or around the anus of Jagjiwan Ram. Even the accused was subjected to a medical examination by PW7 and no injury was found on the person of the accused. On the basis of the above, learned counsel submits that the accused has rightly been acquitted by the lower Appellate Court.

In reply to the arguments made by Shri Nehra counsel for the complainant has argued that all the witnesses examined by the defence were staff members who were working in the school in village Gangtan and,

Crl. Rev. No. 2472 of 2002

hence it was natural for them to support the accused who was himself a teacher in the said school and, hence, no reliance can be placed on their testimony. Learned counsel has further argued that there was no malafide on part of the complainant or the prosecution witness to falsely implicate the accused in this case. Learned counsel has further submitted that during the course of investigation the police had found that the story put up by the complainant was the true story and that is why the accused was challaned and charged for the offence under Section 377 IPC.

I have heard the counsel for the parties at length. A perusal of the statement made by PW9 Ishwar Singh Headmaster of the school in village Gangtan wherein the unnatural act is alleged to have been committed as well as the statements of DW1 to DW6, who were members of the staff of the said school, clearly shows that the school timings were from 8:00 A.M. to 2:10 P.M. It would be highly improbable for any teacher to commit such an unnatural act upon a student especially when the school is running. Even if for the sake of arguments it is assumed that the act was committed by the accused and which was duly witnessed by the complainant, still it was unnatural that the matter was not reported to the school authorities.

Apart from the above, as per the prosecution the complainant had duly witnessed the occurrence and the matter was reported to the Sarpanch. Despite that it took the complainant side more than 28 days to report the matter to the police. If no action was being taken by the Sarpanch of the village than the complainant side ought to have reported the matter expeditiously to the police and therefore on this account also I find that the lower Appellate Court has rightly acquitted the accused on the ground of

Crl. Rev. No. 2472 of 2002

delay on lodging of the FIR as the same was lodged 28 days after the occurrence.

Still further, the ocular version in the present case is not corroborated by the medical evidence. The victim Jagjiwan Ram was duly examined by PW7 Dr. V.K.Jain and no injury was found on the body as well as around the anus of the victim. It would have been an entire different thing if the boy was not examined but once the young student had been examined than the Courts would have to go by the report of the medical examination.

In view of the aforementioned discussion, it cannot be said that the judgment of the lower Appellate Court is perverse in any manner or that the same could not have been arrived at by any stretch of imagination. There is not only a delay of more than 28 days in lodging of the FIR but even the statement of the witnesses shows that the school was still going on when the said act was committed by the teacher on the student. The conduct of the complainant himself of not reporting the matter to any of the school authorities is also unnatural. Apart from the above, the ocular version is not corroborated by the medical evidence as no injuries were found on the person of the victim.

In view of the above, I find no illegality in the view taken by the lower Appellate Court in acquitting the accused.

For the foregoing reasons, I find no merit in the revision petition and the same is dismissed.

5.5.2009
Rupi

(ASHUTOSH MOHUNTA)
JUDGE